

IN THE COURT OF CRIMINAL APPEALS

AT NASHVILLE

MARCH SESSION, 2000

FILED

March 31, 2000

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE

APPELLEE,

VS.

WALTER L. MERRIWEATHER,
JOHN HEAD, JR.,
FREDDIE OSBORNE

APPELLANTS.

)
) C.C.A. NO. M1998-00323-CCA-R3-CD
) C.C.A. NO. M1998-00326-CCA-R3-CD
) C.C.A. NO. M1998-00332-CCA-R3-CD
)
) MONTGOMERY COUNTY
)
) HONORABLE JOHN H. GASAWAY, III
) CIRCUIT JUDGE
)
) (SALE OF A CONTROLLED
) SUBSTANCE)

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FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED - RULE 20 ORDER

ORDER

_____ This is an appeal as of right in three separate cases by defendants who challenge the constitutionality of T.C.A. § 39-17-432, the Drug-Free School Zone Act. These appeals involve a common question of law and have been consolidated pursuant to Rule 16 (b) Tenn. R. App. P..

_____ These cases all arise from a “reverse drug sting” in Montgomery County. The site of the drug sales was within 1,000 feet of a school zone in Clarksville, and the defendants were sentenced under the Drug Free School Zone Act.

The defendant, Merriweather, entered a plea of guilty to sale of controlled substance, a Class A felony, and was sentenced to 15 years in the Tennessee Department of Corrections as a Range I Standard Offender.

The defendant, Head, was found guilty by a jury of sale of a controlled substance, a Class B felony, and was sentenced to ten years in the Tennessee Department of Corrections¹ as a Range I Standard Offender.

The defendant, Osborne, was found guilty by a jury of sale of a controlled substance, a Class A felony, and was sentenced to 32 ½ years in the Tennessee Department of Corrections as a Range II Multiple Offender.

All of the defendants have properly preserved this issue for appeal.

The Drug-Free School Zone Act provides in part as follows:

¹Head was also found guilty of a Class E felony, but that conviction is not involved in this appeal.

§39-17-432. Drug-Free School Zone - Enhanced criminal penalties for violations within zone.

(a) It is the intent of this section to create Drug-Free School Zones for the purpose of providing all students in this state an environment in which they can learn without the distractions and dangers that are incident to the occurrence of drug activity in or around school facilities. The enhanced and mandatory minimum sentences required by this section for drug offenses occurring in a Drug-Free School Zone are necessary to serve as a deterrent to such unacceptable conduct.

(b) A violation of § 39-17-417, or a conspiracy to violate such section, that occurs on the grounds or facilities of any school or within one thousand feet (1,000') of the real property that comprises a public or private elementary school, middle school or secondary school shall be punished one (1) classification higher than is provided in § 39-17-417(b)-(i) for such violation.

(c) Notwithstanding any other provision of law or the sentence imposed by the court to the contrary, a defendant sentenced for a violation of subsection (b) shall be required to serve at least the minimum sentence for such defendant's appropriate range of sentence. Any sentence reduction credits such defendant may be eligible for or earn shall not operate to permit or allow the release of such defendant prior to full service of such minimum sentence.

The constitutionality of this statute was raised in State v. Derrick Jenkins (C.C.A. No. 10C01-9811-CC-00467) (Tenn.Cr.App.1999).² In Jenkins, this Court upheld the constitutionality of the Drug-Free School Zone Act. That decision is dispositive of the issues raised on appeal in this case. Accordingly, we affirm the judgments of the trial court pursuant to Rule 20 of the Tennessee Court of Criminal Appeals.

It appearing that the appellants are indigent, the costs of appeal will be paid by the State of Tennessee.

William B. Acree, Special Judge

CONCUR:

Judge Joe G. Riley

²Application for permission to appeal was denied February 22, 2000. This case has been designated for publication.

Judge Alan E. Glenn